

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ELIZABETH JENKINS,

Plaintiff,

v.

Civil Action No. 5:08CV122
(STAMP)

UNITED STATES DISTRICT COURT,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

On this day, the above-styled matter came before the Court for consideration of the § 2241 habeas corpus petition of the petitioner, Elizabeth Jenkins. A review of the file shows that the petitioner initiated this case on July 29, 2008. Because the petitioner had not paid the filing fee or filed a request to proceed as a pauper at that time, the Clerk sent the petitioner a Notice of Deficient pleading advising her to pay the required filing fee or file a request to proceed as a pauper within ten (10) days. The petitioner filed the appropriate financial forms on September 12, 2008, and her request to proceed as a pauper was granted on September 16, 2008. However, because the petitioner had sufficient funds in her inmate account to pay the filing fee, she was directed to pay the \$5.00 filing fee within twenty (20) days of the date of that order.

On October 30, 2008, Magistrate Judge John S. Kaull conducted a review of the file and determined that the petitioner had failed to timely pay the filing fee. Therefore, Magistrate Judge Kaull

directed the petitioner to show cause within ten (10) days, why her petition should not be dismissed for the failure to prosecute. Magistrate Judge Kaull advised the petitioner that the failure to show cause would result in the dismissal of her case.

Upon a review of the file on this date, the Court finds that the plaintiff has not complied with the Court's order of October 29, 2008, has not requested an extension of time do so, or otherwise explained her reasons for noncompliance. Accordingly, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, it is ORDERED that the plaintiff's complaint [Dckt. 1] is hereby DISMISSED WITHOUT PREJUDICE for the failure to prosecute. It is further ORDERED that this civil action by DISMISSED and STRICKEN from the active docket of this Court.

Should the petitioner choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit, he is ADVISED that he must file a notice of appeal with the Clerk of this Court within 30 days after the date of the entry of the judgment order. Upon reviewing the notice of appeal, this Court will either issue a certificate of appealability or state why a certificate should not issue in accordance with the Federal Rule of Appellate Procedure 22(b)(1). If this Court should deny a certification, the petitioner may request a circuit judge of the United States Court of Appeals for the Fourth Circuit to issue the certificate.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the plaintiff and counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: February 4, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE